

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA, )

4 Plaintiff, )

5 v. )

6 FABIAN SANDOVAL-RAMOS(1) and RAUL )  
7 ARCILA(3), )

8 Defendants. )

Case No. 3:14-CR-267-BR

April 14, 2016

Portland, Oregon

9  
10 TRANSCRIPT OF PROCEEDINGS  
(Imposition of Sentence)

11 BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

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22 COURT REPORTER:

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13  
14  
15 INTERPRETER:

STEVEN MUZIK

1 (Thursday, April 14, 2016; 2:14 p.m.)

2  
3 P R O C E E D I N G S  
4

5 THE COURT: Good afternoon, everyone. Please be  
6 seated.

7 Ms. Bolstad.

8 MS. BOLSTAD: Thank you, your Honor.

9 This is the United States versus Fabian  
10 Sandoval-Ramos and Raul Arcila, Case No. 14-CR-267.

11 Leah Bolstad for the United States.

12 Mr. Andersen is here on behalf of Fabian  
13 Sandoval-Ramos, who is being assisted by a court certified  
14 interpreter, Mr. Muzik. And Raul Arcila is present in court,  
15 in custody, and represented by Mr. Sepp.

16 We're here for the time and place set for sentencing  
17 for both of these defendants, who went to trial in November  
18 2015. And after a four-day jury trial, they were convicted on  
19 Counts 1 and 2, for Defendant Sandoval-Ramos; and Counts 1, 2,  
20 9, and 10, for Defendant Arcila.

21 THE COURT: All right. I sent to counsel this  
22 morning a message indicating I wanted to begin first by  
23 addressing defendants' arguments concerning the proper  
24 guideline calculations generally as they relate to each of  
25 them. And then we'll move to those specific guideline issues

1 that are specific to either one of the defendants. And then  
2 we'll -- we'll continue to proceed, to get to a place where the  
3 advocacy can turn to what would be a reasonable sentence, once  
4 the correctly calculated guideline range is in place. So we're  
5 ready to proceed with that.

6 Ms. Bolstad?

7 MS. BOLSTAD: Thank you, your Honor.

8 And as part of that guideline analysis, at your  
9 suggestion, I'm also -- I would like address the merger issue  
10 right up front.

11 THE COURT: Yes.

12 MS. BOLSTAD: Your Honor, Mr. Sepp raises a good  
13 point about merger in this case. Merger is typically a state  
14 court concept that -- over in federal court, we worry about the  
15 double jeopardy concerns that arise from charging a defendant  
16 or convicting a defendant of two conspiracies that basically  
17 involve the same agreement.

18 On that point, there are things that differentiate  
19 the conspiracies alleged in Count 1; mainly the players  
20 involved. However, the Government concedes that it is -- at  
21 its heart, it's the same agreement in each of those counts.  
22 Count 1 and 2, at its heart, the agreement is to distribute  
23 heroin.

24 What differs between the two counts is the sentencing  
25 enhancements that apply. So Count 1, the sentencing

1 enhancement is the resulting in death. And the Government  
2 charged the case with all six defendants in that count, meaning  
3 they all had an agreement to distribute heroin. And as a  
4 result of the distribution of that heroin, death resulted.  
5 That applied to to all six of them.

6 Count 2, there was a big difference in the players  
7 involved in this heroin distribution conspiracy in terms of the  
8 amounts they were dealing.

9 So the bottom-level participants, Mr. Rosa and  
10 Ms. Godvin, they were not properly alleged to have taken part  
11 in a conspiracy with the amounts involved being over a  
12 kilogram. So they are not charged in Count 2.

13 In Count 2, the sentencing enhancement is over a  
14 kilogram of heroin, which these two defendants -- the fugitive  
15 defendant, Ramirez-Coronel, and co-defendant, Shane Baker --  
16 they are in Count 2.

17 So the solution that the Government proposes at this  
18 sentencing stage is that Count 1, as to both of these  
19 defendants, really drives the bus. It's the conspiracy to  
20 distribute heroin and the sentencing enhancement applicable to  
21 that count of a 20-year minimum that is really what's on the  
22 table here.

23 It would have been possible to charge the sentencing  
24 enhancement in Count 2 as an enhancement in Count 1, which  
25 would have muddled the waters when it came to jury instructions

1 and not knowing who was going to be going to trial at the time  
2 of charging; if that's makes sense.

3 So I think that the solution the Government is  
4 proposing is that we dismiss Count 2 at sentencing to avoid any  
5 potential issues with the double jeopardy issues raised by  
6 Mr. Sepp.

7 THE COURT: Are you making that motion now?

8 MS. BOLSTAD: I would move to dismiss Count 2,  
9 without prejudice. Because if this case comes back from the  
10 Ninth Circuit, for whatever reason, I would like to be able to  
11 address that at a later time.

12 THE COURT: All right. There is a motion made to  
13 dismiss Count 2.

14 Defendants' response? Mr. Sepp?

15 MR. SEPP: If I may have a moment to talk with  
16 Mr. Andersen. I did not anticipate this.

17 THE COURT: You may.

18 MR. SEPP: Thank you, your Honor.

19 THE COURT: Nor did I.

20 (Pause, Mr. Andersen and Mr. Sepp conferring.)

21 MR. SEPP: Defendant Raul certainly has no objection  
22 to the motion to dismiss.

23 MR. ANDERSEN: Nor do I, your Honor, on behalf of  
24 Mr. Sandoval.

25 MS. BOLSTAD: And, your Honor, I would like to defer

1 your ruling on that motion until after we decide Count 1 and  
2 the mandatory minimum applicable. Obviously, I don't want to  
3 dismiss Count 2 until I know what's going to happen with the  
4 rest of the counts.

5 THE COURT: Mr. Sepp and Mr. Andersen, do you have  
6 any position with the respect to the without prejudice part of  
7 the motion which, evidently, is a provisional motion to be made  
8 and ruled on after I do the guideline analysis on Count 1?

9 MR. SEPP: Well -- well, naturally, I would prefer  
10 with prejudice. But I think, in -- in the end, we get to where  
11 we're -- where we want to be today. And if it is appealed, you  
12 know, it starts all over again.

13 And I -- I would think that in order to -- you know,  
14 judicial economy and to get to the crux of the real argument  
15 today, which is Mr. Andersen's argument about mandatory  
16 minimums, I would maybe re-address this to see whether the  
17 motion is going to actually be presented to the Court and then  
18 decide at that moment --

19 THE COURT: All right. Let's -- let's defer the  
20 issue of with or without prejudice.

21 Let's focus, for the moment, then, on Count 1 and the  
22 arguments about the proper guideline calculation with respect  
23 to Count 1, the base offense level, enhancements and the like;  
24 and the triggering of -- or not -- the mandatory minimum  
25 sentence.

1           And then I'll proceed as to Count 1, with -- with the  
2 analyses you're about to give, make a ruling on Count 1, and  
3 then the Government can perfect its motion as to Count 2. And  
4 then, with respect to Mr. Arcila, of course, we have the two  
5 other counts that are in the -- additional to those that  
6 Mr. Sandoval-Ramos has.

7           So, Ms. Bolstad, would you summarize, please, the  
8 Government's position in response to Mr. Andersen's arguments  
9 about the base offense level question. And then Mr. Andersen  
10 can, in the nature of a reply, and otherwise, make the points  
11 that need to be addressed.

12           I would like to be clear as to what the Government's  
13 view is, especially in light of those arguments.

14           MS. BOLSTAD: Yes, your Honor.

15           The Government's view -- the Government agrees with  
16 the PSR writer that the base offense level for Count 1 is a 38  
17 under 2D1.1(a)(2).

18           That guideline reads that the base offense level is a  
19 38 if the defendant is convicted under 21 U.S.C. 841(b)(1).  
20 Any of the amount penalty provisions are listed there; so (a),  
21 (b), and (c). And the offense of conviction establishes that  
22 death or serious bodily injury resulted from the use of the  
23 substance.

24           So, in this case the Indictment alleges the  
25 triggering language in the statute that death resulted from the



1 use of the heroin distributed by this conspiracy. The jury was  
2 asked on Count 1, if that element -- it was treated as a third  
3 element, consistent with **Alleyne**, and whether the Government  
4 had proved that third element that death resulted, beyond a  
5 reasonable doubt. The jury so found with its verdict.

6 We don't get a conviction on Count 1, in which the  
7 Court had those three elements, without the jury making that  
8 finding. And because they made that finding because these two  
9 defendants were convicted on Count 1 as alleged and as  
10 instructed in the jury instructions, we have that triggering  
11 language in the statute for a 20-year minimum. That same  
12 language triggers Base Offense Level 38.

13 THE COURT: Thank you.

14 Mr. Andersen.

15 MR. ANDERSEN: Your Honor, the Government is right.  
16 There are two requirements. And I don't want to just reiterate  
17 my sentencing -- my amended sentencing memorandum that I  
18 apologize for filing just about two hours ago.

19 But I do think that the sentencing guidelines  
20 themselves are clear, and they do have a number of listed  
21 offenses; specifically, 21 U.S.C. 841.

22 Mr. Sandoval was convicted under 846, your Honor.  
23 That is not one of the enumerated statutes that United States  
24 Sentencing Guideline 2D1.1(a)(2) applies to.

25 So without getting to the second crux -- which I

1 would like to address briefly. But without getting to that  
2 second element, that -- the death result, I think that it is --  
3 that by its very language, that sentencing guideline should not  
4 apply because he was not convicted under 841. He was convicted  
5 under 846, as a conspiracy.

6 THE COURT: And the basis of your argument, that he  
7 was convicted under Section 846 and not Section 841?

8 MR. ANDERSEN: Your Honor, for that I did cite one  
9 case for the support of that. Part of the issue with filing my  
10 memorandum so late is that I was not able to research that  
11 entirely. But I think that **United States versus Shabani**, cited  
12 in my amended sentencing memorandum, does make that pretty  
13 clear.

14 It says there -- it refers to Statute 846, as the  
15 drug conspiracy statute. Mr. Shabani, in that case, was  
16 charged with conspiracy to distribute cocaine in violation of  
17 that statute. So that is the statute. And it was a conspiracy  
18 charge. It was a conspiracy theory under which Mr. Sandoval  
19 was convicted.

20 That, I believe, is a distinct --

21 THE COURT: Well, let's begin with the Indictment.

22 MR. ANDERSEN: Right.

23 THE COURT: Is he charged under Section 846 in the  
24 Indictment in Count 1? Is he charged under 841 in the  
25 Indictment in Count 1?

1 MR. ANDERSEN: He's charged -- there are both  
2 statutes listed in the Indictment.

3 THE COURT: How could I possibly conclude that he was  
4 not found guilty of violating Count 1, given the course of the  
5 evidence at trial, the elemental outline for the jury, and the  
6 instructions given?

7 MR. ANDERSEN: Well, your Honor, I -- I understand  
8 the Court's position on that. My -- my position is that the  
9 citations to the statutes are themselves not --

10 THE COURT: Controlling?

11 MR. ANDERSEN: Not controlling.

12 THE COURT: All right.

13 MR. ANDERSEN: And I also, your Honor -- I would cite  
14 back to that case. But, your Honor, this was not a substantive  
15 charge against Mr. Sandoval.

16 THE COURT: What is not a substantive charge?

17 MR. ANDERSEN: I'm sorry. Count 1 was not a  
18 substantive charge. Count 1 was the conspiracy with the  
19 objective to violate that -- that law. I think that is a  
20 distinction that is important.

21 I also note that it could -- that the Sentencing  
22 Guidelines Commission could have included 846 in -- in their  
23 sentencing guidelines list of -- of the triggering statutes.  
24 It did not. I think that that is an important thing to  
25 consider, as well.

1 THE COURT: But that argument, I'm sorry, only tracks  
2 if it's legitimate to say the defendant was not convicted under  
3 841. The guideline clearly asserts it's based on Level 38 if  
4 the conviction's under 841.

5 So, really, the legal question then is am I to  
6 construe, as a matter of law, for guideline base offense  
7 purposes, that the defendant only was convicted under 846 and  
8 not 841?

9 So -- because your authority, the case you're relying  
10 on, was only brought to my attention most recently -- and I  
11 haven't had a chance carefully to review that case -- I need  
12 you to unpack that case now and explain why its analysis should  
13 cause me to reach the conclusion you're asking. So let's --  
14 take me back to that case, and -- and answer first for me, in  
15 that case was the defendant charged under 841? Was the  
16 Indictment in that case an 841 Indictment?

17 MR. ANDERSEN: Your Honor, a part of the problem with  
18 my filing such a lengthy submission is I'm not as well-versed  
19 on **Shabani** as I should be. I do not -- my reason for citing to  
20 **Shabani** was that that was clearly the -- it may well be dicta,  
21 but it was a pretty clear recitation of the count -- the crime  
22 of conviction that Mr. Shabani was convicted of. That he was  
23 not -- it did not mention anything about 841 when, clearly, he  
24 was convicted of a conspiracy to commit a drug trafficking  
25 offense.

1 THE COURT: Well, just because a person in a case is  
2 convicted of a conspiracy citing one statute --

3 MR. ANDERSEN: Right.

4 THE COURT: -- doesn't mean that your client was  
5 convicted of a conspiracy citing that statute when the  
6 Indictment explicitly alleged the triggering statute, 841.

7 So what else about the case you're citing is  
8 persuasive or analytical? How do I get to the place where I am  
9 required, as a matter of law, to conclude the base offense  
10 level for 841 doesn't apply in this case?

11 MR. ANDERSEN: Your Honor, I would bring a couple  
12 issues that I believe support my position. I would refer first  
13 to the statute 841 itself. That says it shall be unlawful for  
14 any person to knowingly -- knowingly or intentionally  
15 manufacture, distribute, dispense, possess, or intent to  
16 manufacture, et cetera. That's not what -- although that  
17 statute is cited, that's not what Mr. Sandoval was accused of.  
18 He was accused of conspiring, of having an agreement; the  
19 objective of which was to commit that offense. He's not  
20 accused of the substantive offense. He's not accused of  
21 actually doing that. I think that --

22 THE COURT: He's accused of conspiracy to commit that  
23 offense --

24 MR. ANDERSEN: Right.

25 THE COURT: -- in a manner that resulted in death,

1 with the enhancement language that --

2 MR. ANDERSEN: Right.

3 THE COURT: So -- go ahead.

4 MR. ANDERSEN: I would also cite to **Pinkerton**, just  
5 generally. And I cited to **Pinkerton** earlier on, when we had  
6 this similar discussion about jury instructions, as the Court  
7 may recall. And that goes to the basic idea of what a  
8 conspiracy is. A conspiracy is a -- is a different offense.

9 The language in **Pinkerton** -- I believe I have -- I  
10 can refer to my earlier submission on the jury. But, in  
11 general, the language -- what **Pinkerton** and a number of other  
12 cases that I cited in that memorandum go to is the fact that a  
13 conspiracy, itself, is a different offense than the substantive  
14 crime.

15 THE COURT: What is the guideline direction in  
16 assessing a guideline base offense level for a conspiracy, as  
17 opposed to --

18 MR. ANDERSEN: Your Honor --

19 THE COURT: -- the substantive offense, which is the  
20 object of the conspiracy?

21 MR. ANDERSEN: Your Honor, 2D1.1 is entitled  
22 "unlawful manufacturing," et cetera. And it also includes  
23 attempt or conspiracy. So I believe that that guideline does  
24 apply to attempt and conspiracy.

25 For that reason, I do believe that 2D1.1(a)(5) does

1 apply to a conspiracy. Then we have to fall back on what the  
2 amounts involved were.

3 THE COURT: Okay. Let me take another look at the  
4 guideline before I ask another question.

5 (Pause, referring.)

6 MR. ANDERSEN: Sure.

7 THE COURT: All right. Go ahead with your point.

8 MR. ANDERSEN: I do have a citation, the **Pinkerton**  
9 citation -- if I can just quote that -- about the differences  
10 between -- that is -- here's a quote:

11 The commission of the substantive offense and a  
12 conspiracy to commit it are separate and distinct  
13 offenses.

14 The citation to that is **Pinkerton versus the United**  
15 **States**, 328 U.S. 640 at 643 --

16 THE COURT: Mr. Anderson, I don't dispute that as a  
17 matter of law.

18 What I'm trying to determine here is what is the  
19 correct base offense level analysis in a situation where, as  
20 here, your client was charged with conspiracy and convicted of  
21 conspiracy. And you're conceding 2D1.1 is the proper  
22 guideline. And the Indictment asserted he was charged with  
23 conspiracy and 841 was cited, and the -- the guideline refers  
24 to 841. And you're seeking to have me basically disregard  
25 those references. And I'm having trouble understanding -- I've

1 never had this argued, so I don't -- maybe I'm missing  
2 something, but I need you to help me understand what you're  
3 telling me.

4 MR. ANDERSEN: I appreciate that, your Honor.

5 What I am saying is that if we go back to just the  
6 language of that sentencing guideline itself --

7 THE COURT: Which one, now?

8 MR. ANDERSEN: I'm sorry. I'm referring to (a)(2).

9 THE COURT: (a)(2).

10 MR. ANDERSEN: The Level 38. It says, "If the  
11 defendant is convicted under a number of statutes."

12 And I agree with the Court that the issue then  
13 becomes, Has he been convicted under that statute?

14 And my position is no, he has not. He has been  
15 convicted under 846. He has not been convicted of any  
16 substantive offense. He's been convicted of an inchoate crime,  
17 which itself is a separate and distinct crime from the crime of  
18 841. He is convicted under 846.

19 As **Pinkerton** says -- and as the Court has noted  
20 also -- the conspiracy and the substantive offense that may be  
21 the object of that conspiracy are separate and distinct.

22 And so the fact that 841 was cited in the Indictment  
23 does not control. In fact, the Indictment clearly says that he  
24 is -- I mean, he is charged with a conspiracy to essentially  
25 violate 841. He's not charged with 841 itself.



1 THE COURT: So the title of the guideline is  
2 unlawful -- I'm skipping some words -- trafficking including  
3 possession with the intent to commit these offenses, attempt,  
4 or conspiracy.

5 So the guideline clearly anticipates it applies to a  
6 conspiracy. Your client's charged and convicted of a  
7 conspiracy.

8 MR. ANDERSEN: I agree.

9 (Pause, referring.)

10 THE COURT: And what you're saying is in (a)(2), when  
11 it says the defendant has to be convicted under 841(b)(1)(A),  
12 (b)(1)(B), or (b)(1)(C) and does not explicitly reference 21  
13 U.S.C. 846 -- the attempt or conspiracy statute -- even though  
14 the title says conspiracy, somehow that guideline would not  
15 apply? Is that what you're saying?

16 MR. ANDERSEN: With one, I think, important caveat.  
17 I agree that 2D1.1 does apply. Its title clearly indicates  
18 that it applies to attempts and conspiracy. But that -- that  
19 specific (a)(2) only applies to specific enumerated crimes.

20 THE COURT: Where in that guideline 2D1.1, then,  
21 would your client's conspiracy conviction fall?

22 MR. ANDERSEN: D1.1(a)(5). There is no specific  
23 enumeration about (e)(5) (phonetic). That's the catchall. If  
24 the other ones do not apply, then go to the drug guideline  
25 table.

1 THE COURT: I'm sorry.

2 (Pause, referring.)

3 MR. ANDERSEN: It's -- I'll wait for the Court.

4 (Pause, referring.)

5 THE COURT: Did you say D?

6 MR. ANDERSEN: No. If I did, I misspoke.

7 2D1.1(a)(5).

8 THE COURT: (5).

9 MR. ANDERSEN: And the reason I get there, your  
10 Honor, is because D1.1(a) lists out five. And it's either, (1)  
11 or (2) or (3) or (4), or the catchall, (5). I believe this  
12 does --

13 THE COURT: Okay. And (5) -- (a)(5) -- 2D1.1(a)(5),  
14 what do you contend the base offense level is?

15 MR. ANDERSEN: As to Count 1, your Honor, I contend  
16 that it is -- according to the PSR, I think it should be a  
17 Level 26.

18 And the reason I get there, your Honor, is because  
19 the drug quantity table at sub C lists out at least 400 grams  
20 but less than 700 grams. That was -- the amount recovered, I  
21 believe, was about 600 and --

22 THE COURT: The jury found a quantity, though.

23 MR. ANDERSEN: That's to Count 2.

24 THE COURT: They still made a factual finding, beyond  
25 a reasonable doubt, of quantity.

1           What's the base offense level for the quantity the  
2 jury found?

3           MR. ANDERSEN: 30. But that's to Count 2. But I  
4 agree that that should apply to --

5           THE COURT: Okay. They made a factual finding.

6           MR. ANDERSEN: I agree.

7           THE COURT: All right. So your argument is Base  
8 Offense Level 38 does not apply because the defendant was not  
9 convicted of the substantive offense at Section 841. Instead,  
10 the defendant was convicted of a conspiracy offense.

11           And because conspiracy under 846 is not enumerated  
12 under 2D1.1(a)(2), one must go to (a)(5), where you contend the  
13 base offense level is 26. Because -- say again the reason for  
14 your quantity --

15           MR. ANDERSEN: Your Honor, if we -- if we are  
16 discussing Count 1 alone --

17           THE COURT: I'm talking about Count 1.

18           MR. ANDERSEN: Then I would -- then I -- the PSR  
19 found that there was 660 -- I believe, roughly -- grams. That  
20 puts him at Level 26.

21           I do -- for purposes of discussion, I agree that --  
22 that it was found that there was more than within a kilogram  
23 involved, and that would put him at Level 30.

24           THE COURT: So let me ask you one more question  
25 before I hear from Mr. Sepp and then go back to Ms. Bolstad.

1           What about the mandatory minimum? And is this,  
2 notwithstanding, a Level 26? If a mandatory minimum applies,  
3 that is the -- that is the guideline range.

4           MR. ANDERSEN: Um-hmm.

5           THE COURT: If there is a mandatory minimum, the --  
6 even if it is a Base Offense Level 26, the guideline range is  
7 the mandatory minimum, if it's higher than a -- an otherwise  
8 correctly calculated guideline range. Isn't that right?

9           MR. ANDERSEN: Right.

10          THE COURT: Now, did you have -- I couldn't tell from  
11 your papers. But your point was that the mandatory minimum 20  
12 years does not apply here?

13          MR. ANDERSEN: Your Honor, I do -- it is also my  
14 position, that the mandatory minimum does not apply here. And  
15 the reason, your Honor, for that is the language of the  
16 Indictment for Counts 1 and 2. And -- switch gears here a  
17 little bit. But they are obviously very -- or -- the same sort  
18 of issue.

19          If I can refer to the Indictment under which he was  
20 charged.

21          THE COURT: I've got it in front of me, yes.

22          Count 1.

23          MR. ANDERSEN: He was charged -- with a number of  
24 other people -- with conspiring, and with others known, to  
25 distribute heroin, a Schedule I controlled substance, in

1 violation of 841.

2 THE COURT: And 846.

3 MR. ANDERSEN: And 846.

4 THE COURT: Um-hmm.

5 MR. ANDERSEN: I believe that is incorrect, actually,  
6 that he was charged under 846. But that's -- we've already  
7 addressed that issue. We're not going to get into that  
8 anymore.

9 Then there's a period. That's the end of the object  
10 of the conspiracy.

11 It does go on to say that the jury further charges  
12 that it resulted -- that the use of heroin resulted in death.  
13 I appreciate that -- that that could be seen as a sentencing  
14 enhancement factor. My argument that I just made is that it is  
15 not.

16 But, essentially, what I'm saying about the mandatory  
17 minimum is that it applies, according to 846, if the object of  
18 the conspiracy was -- essentially was a triggering event. The  
19 object of this conspiracy, as charged and as proven to the  
20 jury, was to distribute heroin, period. It was not an object  
21 to cause death. It was not an object to deliver more than a  
22 kilogram. Those are not the objects of Count 1 or 2. Those  
23 may have been results, as alleged. Those may have been results  
24 as found by the jury. But they were not the object of the  
25 conspiracy as found by the jury.

1           And as 846 indicates, because the object of the  
2           conspiracy as charged was simply to distribute heroin, the  
3           applicable sentencing regime is merely the sentencing regime  
4           for distribution of heroin, which has a maximum of 20 years and  
5           no minimum.

6           And I further say that if you look at the -- at 846,  
7           specifically, the last -- after the last comma, it makes clear  
8           that the commission of which was the object of the attempt or  
9           conspiracy, they could have -- Congress could have decided not  
10          to even include that and it might have made my argument a  
11          little less clear. But the fact that they clearly delineated  
12          the triggering event to be whatever the object of the  
13          conspiracy was is a big issue.

14          I cited a case in my brief concerning that, your  
15          Honor, **Macias Valencia**.

16          In **Macias Valencia**, somebody -- Mr. Macias was  
17          convicted of an offense that triggered a mandatory minimum  
18          because he attempted to do it. So the Court's reasoning in  
19          that was that according to 846, it is not the actuality of what  
20          happened; it is not the result of what happened. It is the  
21          intent of the parties. It is the object of the attempt or  
22          conspiracy that triggers the mandatory minimum.

23          THE COURT: Well, essentially you're arguing that the  
24          Government is deemed to have charged and would have had to  
25          prove that the conspiracy was to distribute heroin for the

1 purpose of causing death, and that's not the way case law has  
2 interpreted the resulting-in-death enhancement. It is the  
3 intention to commit the conspiracy to distribute the heroin.  
4 It is the fact of resulting in death which has to be proved  
5 beyond a reasonable doubt to unanimity that provides the  
6 enhancement. And I just don't have any authority to accept the  
7 argument you're making but clearly you're preserving it.

8 I want to pause for just a minute because I need to  
9 track a statutory reference. Then I would like to hear from  
10 Mr. Sepp and then Ms. Bolstad on this question.

11 Give me just a moment, please.

12 (Pause, referring.)

13 THE COURT: So I'm just refreshing. And, for the  
14 record, 841(b)(1)(C) is the penalty provision on which the  
15 Government and the PSR base their analysis. And it says, in  
16 relevant part, and if death or serious bodily injury results  
17 from the use of such substance, shall be sentenced to a term of  
18 not less than 20 years.

19 So your point is that that's a substantive mandatory  
20 minimum and that the conspiracy does not trigger that?

21 MR. ANDERSEN: Your Honor, conspiracy and the  
22 substantive crime are different. He was not charged with the  
23 substantive crime.

24 The -- and I think what **Macias Valencia** goes to stand  
25 for is -- is the notion that the conspiracy is, itself, a

1 distinct crime.

2           The result in **Macias** -- in **Macias**, there was a  
3 reverse sting, and they were going to deliver -- I forget what  
4 the quantity was. But a quantity enough to trigger a mandatory  
5 minimum to the defendant. But it was an undercover who was  
6 going to deliver it.

7           He showed up. He had the cash. He was going to go  
8 through with the -- with the offense. He was going to buy  
9 the -- whatever the amount of drugs was -- was supposed to be.

10           He was convicted -- or I believe he actually pled  
11 guilty in that case to an attempt and a conspiracy to do  
12 that -- that act.

13           The mandatory minimum was triggered, even though  
14 there was never any -- any drugs anywhere near anybody. And  
15 the reason it was triggered was because the substantive -- or,  
16 I'm sorry, the separate offense of conspiracy -- the intent,  
17 the object, the purpose of that conspiracy and attempt was to  
18 acquire an amount of drugs that would trigger it.

19           In this case, this is no -- the object of the  
20 conspiracy, the intent, the purpose of the conspiracy as  
21 charged and as proven, was simply to deliver heroin, period.

22           I've got a couple -- in preparation this morning,  
23 your Honor, for today's hearing, I looked at some other  
24 Indictments that I do believe charge conduct that -- that is a  
25 conspiracy but also triggers the mandatory minimum.



1           And in those cases -- I can find them in my pile  
2 here, momentarily.

3           The defendants were charged with conspiracy to  
4 deliver, for example, more than a thousand grams of heroin,  
5 with -- so the intent of the conspiracy was to deliver a  
6 thousand grams of heroin. That was included in the object of  
7 the conspiracy. That is a different animal than what we have  
8 here.

9           What we have here is a conspiracy. The object,  
10 purpose, intent of which was to deliver heroin, period, with a  
11 further enhancement that may be, could be used for sentencing  
12 or for whatever purpose the Government intended for was also  
13 accused but it was not accused as part of the object of the  
14 conspiracy. And 841 -- I'm sorry. 846 makes conspiracy and  
15 attempts into separate crimes, and it applies the punishment to  
16 the crimes; not on the result like it does in 841 but on the  
17 object of that conspiracy, the purpose, the intent. Which, in  
18 this case, was simply to distribute heroin. The result doesn't  
19 matter to 846. The result doesn't matter according to **Macias**  
20 **Valencia**. It's the intent, it's the object of the conspiracy  
21 that's charged and proven.

22           THE COURT: All right. I think I understand your  
23 point, even if it's only just now being presented.

24           Mr. Chef -- Sepp. Sorry. What's your view of this?

25           MR. SEPP: I wholeheartedly agree with Mr. Anderson's

1 arguments on this.

2 We had divided these up with me arguing the double  
3 jeopardy, and him arguing his mandatory minimum, if it doesn't  
4 apply.

5 The only distinction between these two is that the  
6 Counts 9 and 10, on my client, do -- he was convicted of an  
7 actual distribution. But I don't think those have much of a  
8 bearing on Mr. Andersen's argument as those two crimes are --  
9 are conspiracy and conspiracy to Count 1 and 2.

10 So I -- I joined him in his -- his argument that the  
11 object of the conspiracy was merely to distribute the heroin,  
12 and the results were death and a thousand grams, were actually  
13 distributed, as found by the jury.

14 I can't really add much more than what Mr. Anderson's  
15 already argued, unless you have a specific question I might be  
16 able to address.

17 THE COURT: Thank you, Mr. Sepp.

18 So, Ms. Bolstad.

19 MS. BOLSTAD: Your Honor, I think that we should  
20 return to the statute itself. If you read 846, it is very  
21 clear 846 is our conspiracy statute.

22 It reads: Any person who attempts or conspires to  
23 commit any offense defined in this subchapter,  
24 shall be subject to the same penalties as those  
25 prescribed for the offense, the commission of

1 which was the object of the conspiracy

2 Mr. Anderson concedes that the object of the  
3 conspiracy in Count 1 was distribution of heroin.

4 Because the object of the conspiracy is distribution  
5 of heroin, we look at the penalty provisions under 841A1.  
6 841A1 is cited in Count 1. Count 1 basically charges these  
7 defendants with conspiring -- conspiring to break the law.  
8 What law? Distributing heroin.

9 So when we go back to 841A1, all of the penalty  
10 provisions that are included in B1 for distributing heroin  
11 apply equally to people who are charged and convicted of  
12 conspiring to violate that law.

13 The statute controls here, and the guidelines are  
14 consistent with the statute.

15 846 is never even mentioned in 2D1.1, save the title.  
16 The conspiracy is mentioned in the title. But when you go back  
17 to the table and look at for violations of that particular  
18 statute, the conspiracy statute 846, appendix A, with the list  
19 of statutes, directs you to go to 2D1.1.

20 There is no other place to go in the guidelines for  
21 violations of 846.

22 THE COURT: All right. Give me a minute here. I  
23 need to do a calculation before we continue.

24 (Pause, referring.)

25 THE COURT: Okay. I need to go back to the premise,

1 then, that counsel has been discussing with me, and that is the  
2 proper base offense level.

3 The Government maintains it should be 38. Yes?

4 MS. BOLSTAD: Yes.

5 THE COURT: Mr. Andersen, you maintain it's 26, for  
6 the reasons indicated?

7 MR. ANDERSON: For Count 1. Correct.

8 THE COURT: We're on Count 1.

9 And?

10 MR. SEPP: We agree 26, yes.

11 THE COURT: I'm overruling the defendant's  
12 objections. I'm adopting the guideline analysis of the Base  
13 Offense Level 38, exactly for the reasons Ms. Bolstad has  
14 argued and as the guideline calculation was described in the  
15 presentence report -- and, of course, this is an issue that is  
16 now preserved for appeal -- I think district courts around the  
17 country would be quite surprised to learn if, Mr. Andersen your  
18 position is accurate because that's not how this has been  
19 applied in every other case of this nature I've seen. But I  
20 certainly do not disregard your argument as frivolous in any  
21 way. I understand it -- as I say, it's preserved. But, as I  
22 say, the plain reading of the guideline, the plain reading of  
23 the Indictment, the elements of the offense and, in the end,  
24 the guideline itself -- which I'm required to follow for  
25 purposes of assessing a base offense level -- call for adoption

1 of the PSR recommendation of 38.

2 So that is the Court's ruling on base offense level.

3 Now, are there other issues about base offense level  
4 before we move on to roles and these other issues that are  
5 individual to the defendants? Anything else, before we do  
6 that?

7 All right. Let's move, then -- we'll first do  
8 Mr. Sandoval-Ramos's particular guideline adjustments. Then,  
9 Mr. Sepp, we'll do yours. I'll calculate the advisory deadline  
10 ranges. And then we can move to the more important part from  
11 my perspective, and that is why you're advocating for a  
12 particular sentence as a reasonable sentence.

13 And then, gentlemen, if either of you wish to address  
14 me before I make a final decision, that will be the time.

15 So, Mr. Andersen, you disagreed with the guideline  
16 analysis for a three-level up-charge, a three-level upward  
17 adjustment for role.

18 Ms. Bolstad, you agree there should be some  
19 adjustment upward but not three. As I recall, you were arguing  
20 for two.

21 MS. BOLSTAD: (Nods head.)

22 THE COURT: Why don't you, Ms. Bolstad, explain why  
23 the guideline recommendation of three is not accurate. Why  
24 your recommendation of two is. And then, Mr. Andersen, we'll  
25 take your position on that enhancement.

1 MS. BOLSTAD: Your Honor, I think there are good  
2 justifications for why the PSR recommended a three-level  
3 increase. Primarily, the scope of this organization.

4 This conspiracy clearly involved five or more  
5 participants and was extensive. And that's really the  
6 difference in the guideline between a three-level bump versus a  
7 two-level bump.

8 I think this defendant should get only a two-level  
9 leadership bump. He was an organizer or a leader in a criminal  
10 activity. The evidence shows that there were two people under  
11 his direction. Those are the two men at the stash house: The  
12 co-defendant, Raul Arcila; and co-defendant fugitive, Placido  
13 Ramirez-Coronel.

14 However, there were other members of this conspiracy,  
15 including the person from whom the defendant obtained the drugs  
16 down in California. Maybe that was one person or more. Plus  
17 we have the upper-level dealers in the Portland area conspiring  
18 with the defendant, such as Shane Baker.

19 I think that there's a difference in this defendant's  
20 conduct, compared to the men who were living at this stash  
21 house, living in mattresses on the floor. The comparison is  
22 Raul Arcila is living at this stash house where co-defendant,  
23 Sandoval-Ramos, pays for the power. He's living in this place  
24 that's devoted to manufacturing drugs. And, as the evidence  
25 showed at trial, there were security implements in place: The

1 DoorJamber to keep out robbers, police. There were -- this  
2 is -- the kitchen was a drug manufacturing center of activity.

3 So Fabian Sandoval-Ramos distanced himself from that  
4 stash. He insulated himself by living nearby, within two  
5 miles, with his family in a much nicer home.

6 So between these two defendants, it's clear the  
7 evidence shows that Fabian Sandoval-Ramos is the man who has  
8 the connection to the source of supply, brought large  
9 quantities of drugs to his stash house, where it was the  
10 responsibility of people below him to -- to weigh out those  
11 drugs, package them up, and then go do the very dangerous task  
12 of delivering those drugs to customers.

13 Fabian Sandoval-Ramos let people below him do that  
14 task.

15 And, for that, I think he warrants a two-level  
16 increase for leadership.

17 THE COURT: Mr. Andersen.

18 MR. ANDERSEN: Thank you, your Honor.

19 I'm just trying to find the applicable guideline.

20 (Pause, referring.)

21 MR. ANDERSEN: Your Honor, the issues -- there are a  
22 couple of issues. The main issue, I believe -- although it's  
23 been cited in the PSR and by the Government just a moment  
24 ago -- is that somehow, because Mr. Sandoval's role as being as  
25 it was he necessarily directed people just doesn't follow.

1 There is no evidence that he ever directed anybody.

2 Just because he lived about two miles away, just  
3 because he was on the lease for the house, none of that -- none  
4 of that is evidence that he directed anybody. And that's the  
5 issue here.

6 The evidence presented at trial, your Honor, was that  
7 Shane Baker called up the Mexican Bobby. And the evidence  
8 presented at trial was Mexican Bobby was to telephone down in  
9 California. And the telephone in California then directed  
10 members of the conspiracy to deliver the drugs.

11 There's no evidence that Mr. Sandoval ever directed  
12 anybody. The fact that --

13 THE COURT: But Mr. Baker's use of that term was  
14 connected to your client in terms of the photograph and his  
15 physical description of him.

16 I think the term was -- was given different meanings.  
17 But it's clear that your client was implicated squarely by  
18 Mr. Baker as someone who was not just at the bottom of this  
19 organization but in a more supervisory or a greater position of  
20 responsibility than those guarding the drugs at the house.

21 MR. ANDERSEN: Your Honor, I disagree with that based  
22 on the testimony provided by Mr. Baker. He was not -- he did  
23 not -- I don't believe -- identify -- he did not identify  
24 Mr. Sandoval, after I questioned him on the stand about --

25 THE COURT: I think that goes to weight. There was



1 an implication. The photo, his physical description of your  
2 client, and then the photo itself.

3 I don't think it's fair to say that he, your client,  
4 is among the least culpable in the group. He has a role. It's  
5 more than the least culpable. I agree with you he is not the  
6 organizer and at the top of the chain. And I think the  
7 Government's perspective that the role adjustment should apply  
8 but at the lowest level that the guideline permits -- 2, as  
9 opposed to 3 or 4 -- is actually an accurate way to view,  
10 relatively, your client's involvement.

11 So if I'm missing something, please tell me, and then  
12 we'll finish this and move to the next part.

13 MR. ANDERSEN: Your Honor, I'm specifically  
14 addressing whether or not he was a leader or a manager. His  
15 role or culpability, I think, is a little bit divorced from  
16 what the guideline says. And that says if he was a manager or  
17 a leader or organizer or some -- of others, if he's directing  
18 others, then that's an issue.

19 There's simply no -- I don't think that the -- the  
20 testimony presented by Mr. Baker rises to the level of -- that  
21 he directed them -- that Mr. Sandoval directed anybody.

22 The evidence -- the hard evidence, we know of, is  
23 that he called to California; California called to the fugitive  
24 co-defendant; and the fugitive co-defendant then -- then  
25 delivered. That's what hard evidence shows.

1 I think Mr. Baker's identity of Mr. -- of whoever  
2 Mexican Bobby was, was vague at best, and I don't think it was  
3 really -- I don't think it rises to the level that indicates  
4 that Mexican Bobby is Mr. Sandoval. Other than that, there is  
5 no evidence that he ever directed anybody.

6 THE COURT: Ms. Bolstad, anything else on role?

7 MS. BOLSTAD: Just on that topic. I think it's  
8 important to remember Mr. Baker's testimony about how the  
9 relationship began.

10 Mr. Baker testified that his friend Shorty introduced  
11 Mr. Baker to this new source of supply. He described that  
12 source of supply as this man, Fabian Sandoval-Ramos, and  
13 remembered meeting this man. And it was in that meeting with  
14 him that Fabian Sandoval-Ramos gave Mr. Baker a phone number,  
15 and explained, This is who you'll call. This is the number to  
16 call when you need drugs. And Mr. Baker proceeded to say,  
17 That's what I would do, but then other people would come  
18 deliver those drugs.

19 So the inference is clear. Mr. Sandoval-Ramos is the  
20 businessman. He's making the connect to a high-level dealer.  
21 And he's directing that dealer that when you call for drugs --  
22 in fact Mr. Baker would deal with runners, people at lower  
23 levels of this conspiracy, who would take the risk and  
24 distribute those drugs. Those are the men who get arrested by  
25 the police. So I would ask you to impose the two-level

1 increase.

2 THE COURT: The PSR writer recommended that the Court  
3 increase the base offense level by three levels. 3B1.1 directs  
4 a three-level enhancement under Subsection (b) if the defendant  
5 was a manager or a supervisor but not an organizer or leader  
6 and the criminal activity involved five or more participants or  
7 was otherwise extensive, increase by three levels.

8 That is compared to Subsection C, which provides, if  
9 the defendant was an organizer, leader manager, or supervisor  
10 in any criminal activity other than as described in A or B,  
11 increase by two levels.

12 I'm satisfied by a preponderance of the evidence that  
13 Mr. Sandoval-Ramos was at least an organizer, leader, manager,  
14 or supervisor, and I am going to apply a role adjustment but  
15 only at two levels because it is an issue of degree. And in  
16 light of Mr. Andersen's arguments, I believe on a preponderance  
17 standard a two-level enhancement is established here.

18 So paragraph 33, in Mr. Sandoval's PSR is now changed  
19 to a two-level enhancement. Paragraph 35 then is a total of  
20 40. Paragraph 38 is a total of 40. And then  
21 Mr. Sandoval-Ramos also made a motion for a Criminal History  
22 departure based on overrepresentation, as I recall.

23 Is that right, Mr. Anderson?

24 MR. ANDERSEN: Yes, your Honor.

25 THE COURT: He, according to the PSR, is at Criminal

1 History Category III with a 2005 DUI, a diversion and  
2 conviction upon guilty plea; and 2013 DUI out of California.

3 So you're arguing from Level 3 to Level 2, or from  
4 Level 3 to Level 1? And why?

5 MR. ANDERSEN: Your Honor, I would ask to impose  
6 Level 1.

7 And the reason I am asking to make a departure, in  
8 general, is that I do believe that the two can -- well, the one  
9 conviction, your Honor, as I understand it, the -- it was a  
10 diversion from 2005. That was never a conviction. Although  
11 the guidelines do allow for the counting of a diversion, there  
12 was never a conviction for that -- that offense. So that, I  
13 believe, is something to take into account in making this  
14 determination that his criminal history is overrepresented.

15 The other reason that the criminal history is as high  
16 as it was was because Mr. Sandoval-Ramos did have a warrant out  
17 of California for failure to complete his -- his treatment.

18 As I noted in my memorandum to this effect,  
19 Mr. Sandoval was in Oregon at the time, and it was very  
20 difficult to get that completed. That is no excuse for not  
21 having completed it, but that is -- that, I believe, is  
22 different than someone who might get more for doing other  
23 crimes or any other reason, other than getting his diversion --  
24 or, I'm sorry, his treatment completed.

25 So those are reasons that the Court could depart

1 under the guidelines.

2 The guidelines, in discussing this, I believe give  
3 quite a bit of deference to the Court. They say the Court  
4 may -- the Court may depart downward under certain  
5 circumstances.

6 One of the -- or the -- the example that the  
7 guidelines give -- and I'll read it. I'm reading from the  
8 application notes for Sentencing Guideline 4A1.3. I'm reading  
9 application note 3, in part.

10 And it says, If, for example, a defendant had two  
11 minor misdemeanor convictions close to ten years  
12 prior to the instant offense and no other evidence  
13 of prior criminal behavior, that could be a  
14 situation which would warrant a downward  
15 departure.

16 In this case, there is one conviction. It is  
17 relatively recent in comparison to that -- that example. But  
18 his other conviction was from about ten years ago. And -- I'm  
19 sorry. It wasn't even a conviction. It was a diversion. So I  
20 believe that this is the sort of case which does merit some  
21 degree of downward departure.

22 I would leave that to the discretion of the Court as  
23 to -- as to how far that you want to go. But, in reality, he  
24 does have one conviction for DUI.

25 And that, I think, could be grounds for the Court to

1 find that he should more -- more correctly be a Level 1,  
2 Criminal History Category I.

3 So I would ask the Court to depart downward to that  
4 effect.

5 THE COURT: Ms. Bolstad, on the criminal history  
6 issue.

7 MS. BOLSTAD: Your Honor, I would defer to probation  
8 on this.

9 I grant to the defense that he is scoring four points  
10 total, and those four points come from what appears to be two  
11 DUIs, which are misdemeanors.

12 DUIs are one of the most dangerous offenses we have,  
13 but they are misdemeanors. And so the difference between four  
14 points and three points is a Criminal History Category, so he  
15 could be down in Category 2, if the Court were to grant his  
16 motion.

17 I don't have a huge objection to that, but I'll defer  
18 to probation.

19 THE PROBATION OFFICER: Your Honor, I would just  
20 point out that had he not had a warrant at that time, he would  
21 still have been on active supervision for this second DUI. So  
22 he would still have two levels for being under a criminal  
23 justice sentence for that, so I don't think it's  
24 overrepresented.

25 THE COURT: Well, I don't think anyone's quarreling

1 with the technically applied part of the guideline.

2 THE PROBATION OFFICER: No. What I'm saying is  
3 defense counsel has made the argument that he had this warrant  
4 because he was unable to finish treatment. What I'm saying is  
5 even if he had finished treatment, he would have still been  
6 under supervision at the time of --

7 THE COURT: Exactly. But my point is, one way or the  
8 other, technically it's correctly counted; whether it's under  
9 what actually happened or the point you're raising.

10 The real question is whether treating the defendant  
11 in Criminal History Category III is a fair representation of  
12 the seriousness of his criminal history, in light of the entire  
13 purpose of the guidelines.

14 So, either way, it would get him where he is. But  
15 that doesn't mean the Court shouldn't consider whether that's a  
16 fair projection of what his criminal history seriousness is  
17 over time. So thank you.

18 THE PROBATION OFFICER: Okay.

19 THE COURT: Appreciate that.

20 I'm granting the defendant's motion. I'm departing  
21 one level, to Criminal History Category 2 on the basis that  
22 under all of the circumstances the criminal history for  
23 Mr. Sandoval-Ramos, as correctly calculated, overrepresents the  
24 seriousness of his criminal history.

25 So for Mr. Sandoval-Ramos, then, the base offense

1 level is 38, plus 2 for the role adjustment as noted. That  
2 takes to us 40, Criminal History Category II, Offense Level 40.  
3 The initial guideline range is 324 to 405 months.

4 So let's leave Mr. Sandoval-Ramos where we are,  
5 there. And, Mr. Sepp, please now take me to the individualized  
6 issues for your client on guideline matters.

7 MR. SEPP: Thank you, your Honor.

8 We're objecting to the fact that there should be a  
9 weapon harassment based on the sole -- well, the evidence that  
10 I'm aware of is there is a picture of my client holding what  
11 appears to be a weapon and what appears to be a drugs. In  
12 actuality, they're not drugs.

13 No weapons were ever recovered from this scene at  
14 the -- any arrest or any search of either location 1 or  
15 location 2.

16 I did a very extensive search on cases where the gun  
17 enhancement was allowed. And in all of them, a weapon was  
18 actually found at one of the scenes that were searched; in a  
19 car, a house, a second house. But in this case, there was  
20 nothing -- no weapons found at this level.

21 The only weapons that were found were well down the  
22 road on a -- I can't remember which -- which defendant it was,  
23 but my client would never have had knowledge of that.

24 There's zero -- zero evidence to show -- even if the  
25 picture is of a weapon and/or drugs and/or whatever, it helps



1 corroborate that it could be in advance of the conspiracy.

2           There's no time stamp on the picture. It could have  
3 been taken well before Mr. Arcila was recruited into the  
4 conspiracy. It could have been taken -- as I said, just well  
5 before the conspiracy was even -- he was recruited but he  
6 hadn't joined yet.

7           And aside from the picture, that's the only evidence  
8 that was ever presented that there was -- my client ever  
9 possessed a firearm. I don't believe that it could be linked  
10 to the -- to the process of the conspiracy. It can't be linked  
11 to aiding and abetting and moving forward; or he had possession  
12 of it during the conspiracy or the -- or any of the 9 and 10,  
13 the possession -- or the actual distributions themselves.

14           THE COURT: All right. Thank you, Mr. Sepp.

15           Ms. Bolstad, with respect to that enhancement?

16           MS. BOLSTAD: Mr. Sepp is correct. We did not seize  
17 an actual firearm in this case. But at Fabian Sandoval's  
18 house, we seized an empty gun case; a case that clearly was for  
19 a firearm.

20           And at Mr. Raul Arcila's stash house, where he lived,  
21 at location 1, we found ammunition in that same kitchen where  
22 drugs were being manufactured. And the Court will recall the  
23 pictures of that kitchen. This is not a place stocked with  
24 food and pots and pans. It was drugs, drug packaging, and a  
25 bullet on -- on an otherwise empty shelf.

1           So that, in connection with the photograph of  
2 Mr. Arcila, holding the firearms, those photographs are GPS  
3 located at location 1, the same location where we found the  
4 bullet; the Government would submit is sufficient evidence to  
5 apply the two-level bump for a dangerous weapon being connected  
6 with the offense.

7           THE COURT: I think it's a close question here, and  
8 it is I think too close to speculative to meet the standard of  
9 what is more probably true than not. And, therefore, I'm  
10 sustaining the defendant's objection to the enhancement at  
11 paragraph 32 and not applying it.

12           That then changes paragraph 36 to a total adjusted  
13 offense level, I should say, of 38. And then we move to  
14 criminal history.

15           Are there other issues there for Mr. Arcila?

16           MS. BOLSTAD: Yes, your Honor.

17           THE COURT: Go ahead.

18           MS. BOLSTAD: The Government has -- I wrote in my  
19 sentencing memo that I think Mr. Arcila's criminal history is  
20 overstated. I believe he penciled out at a CHC IV, which are  
21 for two DUII misdemeanor offenses and one Burglary 2 in the  
22 state of California, where we don't have a description of what  
23 occurred there. But a Burglary 2 in California can be a  
24 misdemeanor offense. It can be -- it's referred to as a  
25 commercial burglary. So that could be like a shoplifting. And

1 I'll note that he did not receive a very significant sentence  
2 at all for that crime. So I would have no objection to  
3 reducing his criminal history as overrepresented, down to a CHC  
4 III.

5 THE COURT: Well, his 5 -- his score of 5 is enhanced  
6 by the fact that he was on probation.

7 So he was actually a score of 7, which places him in  
8 Category IV.

9 MS. BOLSTAD: Correct. And so I'm -- I think that  
10 the 7 is on the edge of Category 3 and 4, and I would have no  
11 objection to moving him into Criminal History Category III.

12 THE COURT: All right. Mr. Sepp, your point on  
13 criminal history.

14 MR. SEPP: I have no objection to that; shifting it  
15 from Category IV to III.

16 She pointed out that it is a 7, the low end of the  
17 Category IV, which means he would be placed amongst people in  
18 that category who have at least got both 1 or 2 felony  
19 convictions; whereas he doesn't have any. His history is that  
20 of drunk driving. The majority of his -- his convictions here,  
21 the two are for drunk driving in Clackamas; drunk driving in  
22 Washington County.

23 At the time of these convictions he was certainly  
24 abusing alcohol, and that's reflective in getting two DUIs,  
25 within a year. Unlike the fact that he's -- he's in prison

1 now -- excuse me, in jail now, and he's gone through  
2 rehabilitation and the fact that he is planning on going to  
3 the -- apply for ADAP. Once he goes to federal prison, he will  
4 deal with the fact that he will no longer have a substance  
5 abuse problem. And that will seriously minimize any chance of  
6 his recidivism, based upon the fact that aside from these  
7 charges we're here for today, it is alcohol or substance abuse  
8 related. And will clear his mind. When he comes out, I don't  
9 believe there's a chance that he'll be -- he will not reoffend.

10 THE COURT: I am adjusting the defendant's Criminal  
11 History Category by way of a downward departure, given these  
12 arguments, from Category IV to Category III. At Offense Level  
13 38, Category III, the guideline range is 292 to 365 months.

14 And, again, I'll just note for the record that the  
15 arguments that were made but that I did not adopt by  
16 defendants, each of them -- individually and collectively --  
17 with respect to the correctly calculated guideline range and  
18 the question of -- well, all of those issues that we've  
19 addressed, those are preserved for the record.

20 But now I need to turn to determining what is a  
21 reasonable sentence to impose. The guideline range just  
22 calculated is but one factor the Court must take into account.

23 With respect to Mr. Sandoval-Ramos, then,  
24 Ms. Bolstad, does the Government move to dismiss Count 2,  
25 before we continue?

1 MS. BOLSTAD: Yes, your Honor.

2 THE COURT: All right. I am granting the  
3 Government's motion to dismiss.

4 If, Mr. Andersen, you wish to be heard after today on  
5 the question of whether the dismissal should be with or without  
6 prejudice, you may make a motion to make it with prejudice. I  
7 think, for purposes today, moving forward, I'll note that it is  
8 without prejudice. That's the form of the Government's motion.  
9 You have leave to challenge that part after today, but I don't  
10 think we need to take the time now to deal with that part.

11 MR. ANDERSEN: Thank you.

12 THE COURT: That said, we have but one charge,  
13 Mr. Andersen, I need to address with your client. And I  
14 suppose, again, Ms. Bolstad, you should proceed first, to  
15 address the sentence you believe is reasonable under all the  
16 circumstances; there being a mandatory minimum sentence of 20  
17 years and a maximum penalty of life.

18 MS. BOLSTAD: Your Honor, the Government in this  
19 case -- I recommend that the Court impose a sentence for  
20 Mr. Sandoval-Ramos of 252 months, followed by five years of  
21 supervised release, a fee assessment.

22 Mr. Sandoval-Ramos exercised a leadership role in  
23 this case. For that reason, I'm recommending that his sentence  
24 be higher than Mr. Arcila. Just to preview, I'm going to  
25 recommend that Mr. Arcila get the mandatory minimum, the 240

1 months.

2           This is -- the nature of this offense is horrific.  
3 As the Court lived through that trial, you heard about the  
4 young men and women who were impacted by this deadly poison of  
5 heroin that is a scourge on our community. It's a scourge on the  
6 communities across the country. It's not just young men and  
7 women. It's middle-aged. It's older men and women. This drug  
8 impacts everybody, without regard.

9           And there was no evidence in this case that these two  
10 defendants used the drug. They are not drug addicts. They  
11 were not captive to the grasp of this drug. They were  
12 businessmen making thousands of dollars by selling poison that  
13 ends up killing people.

14           And the drug is so addictive, the grasp that it has  
15 on people, as you heard from Morgan Godvin and Michael Rosa and  
16 Shane Baker, is that becomes the only thing in life that  
17 matters. Not having that heroin is the worst sickness on  
18 earth.

19           And these men didn't experience that and their  
20 families didn't experience that. They sold it, they made  
21 money, they profited while people are dying.

22           So the nature of the offense is one of the worst we  
23 see in federal court. It is very serious. That's why Congress  
24 has such high penalties for it.

25           Unlike our co-defendants, these defendants made very

1 different choices about how to proceed with their case.

2 No one can fault them for the choices they made, but  
3 here we are with the consequences of those choices. Each of  
4 them is subject to a 20-year mandatory minimum, which is wholly  
5 appropriate based on the conduct here. They sold drugs in a  
6 conspiracy that found their way to Mr. Delong, who used that  
7 heroin. He overdosed, and he died a painful oxygen-depriving  
8 horrific brain death, alone.

9 Mr. Delong's family is not able to be here today.  
10 But you will recall the compassion with which Mr. Delong's  
11 mother spoke at the sentencings of Morgan Godvin. She is  
12 devastated that her son is dead. She is devastated that her  
13 son's friend also has to face the consequences; that Morgan  
14 Godvin had to go to prison. She recognized how devastating  
15 this drug is in the community. And she was not out for  
16 revenge. She has not asked for restitution. She's just a -- a  
17 soul who is never going to be the same.

18 These defendants made their choices. They --  
19 Mr. Sandoval-Ramos sort of attempted to cooperate. It was some  
20 of the least-productive cooperation I have ever encountered in  
21 my career. I think it was misleading in nature, it was not the  
22 full truth, it was not helpful, and then I think  
23 Mr. Sandoval-Ramos even made the later decision to come in and  
24 lie about what it was that he understood and did not understand  
25 in that proffer process.

1 And he testified under oath in front of this Court,  
2 and this Court made findings about his -- about his testimony  
3 in the context of other witnesses. And while you didn't come  
4 out and say I think he was lying, you found that his  
5 presentation was not to be believed in light of the  
6 presentations of the other witnesses in that matter.

7 Now, his guideline range, as the Court has  
8 calculated, is 324 months to 405 months. So I'm asking a  
9 sentence below that range as something that is sufficient and  
10 not greater than necessary.

11 Twenty-one years is a long time. I recognize that.  
12 It is not to be lightly taken or imposed. But I think that 21  
13 years is necessary to avoid unwanted sentencing disparities  
14 between this defendant and Mr. Arcila, so I'm asking the Court  
15 to impose that 21-year sentence; which, again, is well below  
16 the guideline range that we've calculated today.

17 THE COURT: Thank you.

18 Mr. Andersen.

19 MR. ANDERSEN: Thank you, your Honor.

20 There are a number of factors to consider under  
21 3553A, one of which was expounded upon just a moment ago.

22 There are other factors that I would like to address  
23 as well, your Honor, and those go to the history and  
24 characteristics of the defendant, the need to reflect the  
25 seriousness of the offense, promote respect for the law,



1 provide just punishment, and to deter both others and  
2 potentially Mr. Sandoval.

3 And the main one I would like to address is the  
4 history and characteristics of the defendant. But, first, I  
5 would like to point out, your Honor, as noted by the Government  
6 correctly I think, 20 years is a long time; 21 years is a long  
7 time. Clearly, I -- I have preserved the issues about whether  
8 or not the mandatory minimum apply and -- and the guidelines.  
9 I don't want to go into those again.

10 But assuming the Court's -- understanding the Court's  
11 ruling to that effect, I think that 20 years is -- is  
12 sufficient. 20 years is two decades, your Honor. 20 years --  
13 I -- I listed a number of things that 20 years will mean to  
14 Mr. Sandoval. That will mean he won't see his children  
15 graduate. He won't see his children get married, have  
16 children. Excuse me. (Pause.) So the question is, is that  
17 sufficient but not overly punitive?

18 I don't disagree with some of what the Government has  
19 said about the problems of heroin. As -- I do disagree that  
20 the best way of dealing with that is to incarcerate people for  
21 lengthy amounts of time. I understand that that is -- that is  
22 one of the main tools in the criminal justice toolbox.

23 And -- but, your Honor, it still remains to the Court  
24 to decide what is sufficient but not -- but not greater than  
25 necessary to comply with those factors.

1 I would like to address the history and  
2 characteristics of the defendant. I did include a memorandum  
3 from my investigator about her interview. (Pause.)

4 I did get some letters from his family that reflect  
5 the same thing. Sorry, I did not -- (pause, crying.)

6 THE COURT: Do you need a few minutes, Mr. Andersen?

7 MR. ANDERSEN: I apologize, your Honor.

8 THE COURT: It's all right. These are different  
9 issues.

10 I appreciate the responsibility you're taking in your  
11 role.

12 MR. ANDERSEN: And, your Honor, what those interviews  
13 and what the letters I did give to the Court illustrate is that  
14 Mr. Sandoval was a -- a loving father. He provided for his  
15 family. The PSR, I think, details a long work history in -- in  
16 furtherance of that love and support. I -- I think that's some  
17 of the characterizations of Mr. Sandoval's motives. I don't  
18 agree with -- I think that he did get involved in a drug  
19 conspiracy. As a noted in my sentencing letter, he understands  
20 that and he agrees, I think, with -- with the concept that --  
21 he accepts responsibility for -- for the choices that he did  
22 make. He did get involved with the drug conspiracy, and we're  
23 not denying that.

24 Your Honor, I think his role in the drug conspiracy  
25 seems a little less clear to me. As I explained it in my

1 sentencing letter, I think that he came upon this drug  
2 conspiracy innocently.

3           As I noted in my sentencing letter, he did -- he met  
4 with who I believed is the real Mexican Bobby. Due to the fact  
5 that he's a Shade Tree auto mechanic. He learned the skills  
6 that he uses to be a Shade Tree auto mechanic from his father,  
7 growing up in Mexico, who had a machine shop. And Mr. Sandoval  
8 was -- basically grew up in a machine shop, and learned all  
9 sorts of things about being a mechanic.

10           He fixed cars. He bought and sold cars. He fixed  
11 them up. That was one of his side businesses. Again, in  
12 furtherance of the support that he gave to his family.

13           In meeting with Mr. -- with Mexican Bobby -- I  
14 detailed a bit. And I don't want to spend too much time on it.  
15 He did mention to Mexican Bobby that he did have a house that  
16 he was going to have to abandon, due to the fact that he was  
17 not able to keep a better job that he had found. And that, I  
18 think, led to his involvement with this conspiracy.

19           Now, he could have -- I agree, he could have -- once  
20 he realized what was going on, he could have walked away. I'm  
21 not denying that. He is -- he does bear responsibility for his  
22 choices, as he himself, I believe, will tell you momentarily.  
23 But that does not detract from the fact that the history and  
24 characteristics of Mr. Sandoval are what they are.

25           I do believe that 20 years would promote respect for

1 the law. I do believe that 20 years provides deterrence not  
2 only to Mr. Sandoval, who I believe will be deported at the end  
3 of whatever sentence is imposed. But it is unclear to me --  
4 and I cited, briefly, some scholarly research on this. It is  
5 unclear to me what 20 years versus 21 or 25 or -- or any number  
6 above -- above would really do in terms of deterrence any  
7 further than 20 years would do.

8 I just don't see -- although the guidelines allow for  
9 it and, clearly, as -- as cited by the Court, the maximum here  
10 is a lifetime imprisonment. That's -- that is clearly --  
11 reflects the -- the concept -- or reflects the seriousness of  
12 the offense. But 20 years, I think, should surely be  
13 sufficient, your Honor. That's about what I have to say. That  
14 is what I have to say.

15 THE COURT: Are there -- is there a request for  
16 designation to a particular facility, Mr. Andersen? And any  
17 other sentencing recommendations you wish?

18 MR. ANDERSEN: Your Honor, I believe that due to the  
19 fact that he will most likely be deported at the end, he is  
20 unavailable for some treatment programs. That's unfortunate.  
21 But I would ask if the Court is willing for a recommendation to  
22 appropriate treatment programs.

23 His -- his history does reflect a potential problem  
24 for alcohol abuse. He does have two run-ins for drunk driving.  
25 That could be something that may be available to him.

1 I would also note, your Honor, in the pretrial  
2 detention that Mr. Sandoval has been -- in pretrial, he has  
3 availed himself of a number of programs that are available to  
4 him, including religious counseling, including a work -- he has  
5 worked at the -- at the kitchen in -- at Columbia County. He  
6 went through a process, that I discussed with the captain at  
7 Columbia County, that not many people go through to get  
8 certification for food handling.

9 So he has evidenced the desire and ability to avail  
10 himself of programs and better -- that could potentially better  
11 himself, so I would ask that any of those programs being  
12 available. His family does live in the Portland metro area. I  
13 think that placement at Sheridan would be the most appropriate,  
14 or potentially other locations nearby. Sheridan is the only  
15 one that we would request designation to with the understanding  
16 that the Bureau of Prisons may not comply with that request.

17 I don't have any other --

18 THE COURT: Does your client wish to make a  
19 statement?

20 MR. ANDERSEN: I believe he does.

21 THE COURT: All right. Sir, would you stand, please.

22 Good afternoon.

23 THE DEFENDANT THROUGH THE INTERPRETER: Good  
24 afternoon.

25 First of all, I would like to say that I am very

1 sorry for the death of Mr. Justin. I know that it's not easy  
2 for a family to go through that. My family, with my wife, did  
3 also.

4 What I'm not in agreement with is that I be  
5 classified as a leader when it's clear that I was not a leader.  
6 We're talking about Mexican Bobby. Mexican Bobby was the  
7 leader. You can see that Placido was the one that got orders  
8 from him, not me. How is it possible that I would be the  
9 leader, if I had been living in a house with two bedrooms for  
10 over ten years; and with a daughter who's 16, one who's 12, and  
11 one is -- (Interpreter speaking to defendant.) 11.

12 I understand that I need -- I need to be punished,  
13 but I don't think it's fair that I be punished for a death that  
14 I don't think I was responsible for.

15 I am aware that I am being punished for the acts for  
16 which I take responsibility. And like the prosecutor said, I  
17 tried to cooperate, but lied; I never lied to them. I always  
18 told them the truth. If they didn't believe me, well, that's  
19 another problem. I was always honest.

20 If we're going to talk about dishonesty, how can you  
21 apply more truth to an addict like Baker and the things that he  
22 said than the things that I said.

23 (Pause, Mr. Andersen, the interpreter, and the  
24 defendant conferring.)

25 THE DEFENDANT THROUGH THE INTERPRETER: When the

1 agents arrived at my home to arrest me, they arrested my  
2 daughters. And I don't think that's right or normal. When the  
3 agents testified here, they denied that they ever arrested or  
4 put handcuffs on anyone else.

5 And based -- that it was only me, and that makes me  
6 angry. That's not true. They were lying. That's all.

7 (Pause, Mr. Andersen speaking with the defendant.)

8 THE DEFENDANT THROUGH THE INTERPRETER: I accept  
9 responsibility for my actions, but I would request a fair  
10 sentence.

11 THE COURT: All right. Thank you, sir.

12 Let me just note for the record that the guideline  
13 range I calculated with the two-level upward enhancement for a  
14 leadership role was 262 months to 327 months. I'm sorry. It  
15 was 324 months to 405 months.

16 If I did not apply the two-level upward enhancement,  
17 the range would be 262 to 327 months. And, in any event, the  
18 Government's request here is for 252 months, which is below the  
19 guideline range even if the enhancement did not apply.

20 In the end, that guideline enhancement is simply a  
21 factor. It's not one that's going to control the day here  
22 because I agree with the Government and with Mr. Andersen that  
23 the guideline range, as I've calculated it, is probably too  
24 high under all of the circumstances to meet the balancing  
25 responsibility I'm required to meet under the statute.

1           The Government is arguing that I should sentence the  
2 defendant to a term of one year longer than the mandatory  
3 minimum.

4           The defendant, while objecting to the application of  
5 the mandatory minimum in the context we've described earlier  
6 makes an important point. The difference between 20 years and  
7 21 years is really what's at issue here relative to those  
8 recommendations.

9           The Court's fundamental duty here is to impose a  
10 sentence that is enough but not greater than necessary; to  
11 punish very serious criminal conduct, to promote respect for  
12 the law, and to take into account the degree of seriousness  
13 here that ended up costing a young man his life. That the  
14 defendant asserts now that he is not responsible for  
15 Mr. Delong's death is quite unfortunate, given all that has  
16 been demonstrated in the many proceedings that have led to  
17 today. He clearly is responsible for that death, in that he  
18 was a key conspirator in the conspiracy that led to the  
19 distribution to him and his death that night. To say otherwise  
20 is simply disrespectful and not persuasive.

21           Nevertheless, I believe, under all of the  
22 circumstances, Mr. Sandoval-Ramos is fairly punished with the  
23 Congressional mandatory minimum of 20 years.

24           So, sir, would you stand, please.

25           For all of those reasons, I am imposing a sentence of



1 20 years on Count 1. I believe by the time the defendant  
2 completes that sentence, he will be in his mid to late '50s.

3 He will, in all likelihood, be deported from the  
4 United States. The 20-year penalty for what was a business  
5 transaction for this gentleman, repeated on a regular basis,  
6 that did in fact prey upon the addiction of Mr. Delong and  
7 others similarly situated is, I think, fairly punished with  
8 that minimum. It's an entirely different question what  
9 sentence would be imposed if that minimum was not in place, and  
10 that is not a matter as to which I intend to speculate.

11 So the defendant is committed to the custody of the  
12 Bureau of Prisons for that term: 20 years. After which he's  
13 required to be subject to the Court's supervision for an  
14 additional five years in supervised release.

15 If he is in the United States upon the completion of  
16 his sentence, he's required to report to the nearest United  
17 States probation officer within 48 hours of release.

18 He must obey all United States laws, including laws  
19 concerning entry into the United States. Thus, if he is  
20 deported, he must not return to the United States unless he has  
21 the permission of the United States Government to do so, has  
22 notified the United States attorney and the United States  
23 probation officer in this district.

24 If he enters this country illegally while he is on  
25 supervised release, he will be returned to prison in this case.

1 He will be prosecuted for an illegal reentry crime.

2 A 100 dollar statutory assessment is imposed.

3 The defendant is required to provide a DNA sample, if  
4 requested of him by his probation officer.

5 I recommend but cannot require that the Bureau of  
6 Prisons designate the defendant to the Sheridan facility to be  
7 near family. I recommend but cannot require that the defendant  
8 be afforded all treatment for which he qualifies,  
9 notwithstanding the immigration issues that might otherwise  
10 disqualify him.

11 Count 2 has been dismissed against this defendant on  
12 the record indicated.

13 Is there anything else, Ms. Bolstad, for this matter?

14 MS. BOLSTAD: No, your Honor. Thank you.

15 THE COURT: Mr. Andersen?

16 MR. ANDERSEN: No, thank you.

17 THE COURT: All right. Please be seated.

18 With respect to Mr. Arcila, Ms. Bolstad, your  
19 recommendation, please.

20 MS. BOLSTAD: Your Honor, the Government recommends  
21 for Mr. Arcila a sentence of the mandatory minimum, 240 months  
22 imprisonment, followed by five years of supervised release and  
23 a 100 dollar fee assessment.

24 I think that sentence is an appropriate sentence in  
25 light of the nature of the offense, which I won't repeat, and

1 Mr. Arcila's role and repeated conduct of delivering a highly  
2 addictive poison that ends up killing people.

3 THE COURT: Are you making the same motion to dismiss  
4 Count 2 as to this defendant?

5 MS. BOLSTAD: I am, your Honor. And then as to  
6 Counts 9 and 10, I would ask for the Court to impose sentences  
7 on those Counts to be run fully concurrent with Count 1. These  
8 three counts together, grouped for sentencing purposes.

9 THE COURT: So on Count 9, the range is 5 to 40  
10 years. On Count 10, likewise.

11 Are you asking for anything more than five years  
12 concurrent on each of those two counts, in light of the  
13 mandatory minimum on Count 1?

14 MS. BOLSTAD: No, your Honor, I'm not.

15 THE COURT: All right. So 20, 5, and 5; concurrent.  
16 Yes?

17 MS. BOLSTAD: Yes, your Honor.

18 THE COURT: Thank you.

19 Mr. Sepp, good afternoon, again.

20 MR. SEPP: This has been but a small portion of  
21 Mr. Arcila's life. One to three months of a 26-year-old's  
22 life, and it all went wrong. He may not have been addicted to  
23 the heroin, but he did have his addictions. He is addicted to  
24 alcohol. He is an alcoholic. He also was using cocaine as he  
25 disclosed to the -- in the PSR, for two -- two to three times a

1 week during this time. So he, too, was an addict. He, too,  
2 suffered from substance abuse issues.

3 He was targeted. He was asked to come join. He was  
4 asked to go party at this home. And as the party got going,  
5 decisions that he made were wrong.

6 He is a loving son. He has a supportive family. He  
7 was forced to live through a horrific injury that his mother  
8 suffered. These all affected him. Whether or not that's the  
9 reason he started drinking, I don't know.

10 The testimony and the evidence that came out showed  
11 that he, in this call-in order distribution system, he  
12 essentially was nothing more than a runner. He was told to go  
13 in a car and drive in that car, and drugs were delivered from  
14 that car.

15 He is -- he's not a leader. He is merely just -- for  
16 lack of a better word -- a mid-level employee.

17 It's tragic that a life was lost, and I'm not going  
18 to debate the disparage of heroin in this country, specifically  
19 this city. But he has taken advantage -- since he's been  
20 incarcerated, he has -- not unlike Mr. Sandoval, he did get  
21 certified to work in the kitchen. He did take advantage of the  
22 substance abuse treatment programs as best he could. At  
23 Columbia County, he also joined a religious group. I would ask  
24 that any treatment that he qualify for be made available to  
25 him. He has shown an interest in -- as I mentioned earlier,

1 the drug and alcohol program that the prison offers. He would  
2 like to get into that immediately. He would designate --

3 Bakersfield?

4 Bakersfield prison, if possible, to be --

5 THE COURT: To be close to family?

6 MR. SEPP: Correct.

7 He does have family members here in support of him.

8 I think the recommendation of the Government is fair.

9 Twenty years for someone who's in his mid-20s is an  
10 eternity. He is going to be in his mid-40s when he gets out.  
11 If he does start a family, he's going to have to start very  
12 late in life.

13 He's -- it's going to promote respect for the law,  
14 and it's going to hammer home the severity of this crime by  
15 doing 20 years.

16 Not really much more to -- to add to this that I  
17 haven't already included in the submission I mailed to you this  
18 last week some time.

19 I ask that, you know, he be sentenced to the 20  
20 years, as the Government recommended, and then the five and  
21 five to run at the same time and be done --

22 THE COURT: Which are the minimums across the board?

23 MR. SEPP: Yes.

24 THE COURT: Mr. Arcila, good afternoon.

25 THE DEFENDANT: Good afternoon.

1 THE COURT: Is there anything you would like to say,  
2 sir?

3 DEFENDANT ARCILLA: I just want to apologize to the  
4 Court. And, you know, it's a sad tragedy that has happened.  
5 There's nothing that I can say that will bring Mr. Delong back.  
6 But hopefully, with the help of God, we have strength. Not  
7 only his family but also my family, because they're both  
8 suffering. You know, my parents are already elderly. So by  
9 the time -- if I ever do get out, I don't think they'll be  
10 around.

11 I don't have any girlfriend, I don't have a wife, I  
12 don't have kids. And hopefully, if I do get out, it's not too  
13 late to start a family. And that's all I have to say.

14 Thank you.

15 THE COURT: Thank you, sir.

16 Well, Mr. Sepp's points about Mr. Arcila not having  
17 been a leader, or at least not much of one as has been  
18 discussed with Mr. Sandoval-Ramos, those points are all  
19 swallowed by the fact of the mandatory minimum at 20 years.  
20 Both Mr. Arcila and Mr. Sandoval-Ramos are treated identically,  
21 at least with respect to that minimum. Certainly the Court  
22 does and did have authority to sentence higher than that. But  
23 in my judgment, under all of the circumstances here, as I've  
24 already noted with respect to Mr. Sandoval-Ramos, a sentence of  
25 20 years there was sufficient for him. And I don't believe

1 Mr. Arcila, in any way, is more culpable than  
2 Mr. Sandoval-Ramos. Each of these gentlemen did have  
3 opportunities, as the prosecutor referenced, to resolve their  
4 cases differently. And I'm certain they regret those  
5 opportunities were not seized.

6 The truth of the matter is there was a jury trial for  
7 each of them, evidence presented and confronted. A jury  
8 evaluating the sufficiency of the Government's case. And with  
9 respect to every issue presented to the jury, the Government  
10 established to the jury's unanimous consent guilt beyond a  
11 reasonable doubt and the sentencing factors enumerated on the  
12 verdict.

13 And so in many respects, with respect, Mr. Arcila, to  
14 you, the law controls what the sentence is. I don't believe  
15 there's any reason at all for me to exercise discretion to  
16 sentence you above these minimums. There's also not any  
17 authority for me to sentence you below them.

18 And so I am imposing a sentence on Count 1 of 20  
19 years, the mandatory minimum. On Count 9, five years,  
20 mandatory minimum. On Count 10, five years mandatory minimum,  
21 Counts 9 and 10 to run concurrently with each other and Count  
22 1, such that they will be served while you're serving on Count  
23 1.

24 There is a 100 dollar statutory assessment on each of  
25 those three counts.

1 Count 2 is dismissed on the Government's motion, as  
2 indicated.

3 I do recommend that the Bureau of Prisons designate  
4 you to a facility in the Bakersfield, California, area; or as  
5 near thereto as is possible so that you may be near family, but  
6 I don't control those decisions. Those are for the Bureau of  
7 Prisons to make.

8 I recommend that you be offered and that you seek out  
9 all treatment, programming, and job training that otherwise is  
10 available to you. It will be up to you to make the best of  
11 these days.

12 I'm certain you are remorseful, and that has been  
13 expressed. There isn't anything anyone can do to turn this  
14 clock back, but you can do something to make positive use of  
15 the time are you in prison, as can Mr. Sandoval-Ramos himself,  
16 and I hope that each of you do.

17 There is a five-year period of supervised release I'm  
18 imposing on each of the three counts, just as I said for  
19 Mr. Sandoval-Ramos. Although you may be deported from the  
20 United States, the -- if you're not, then you're required to  
21 report to a probation officer -- a United States Probation  
22 Office within 48 hours if you're ever released. And then a  
23 five-year period of supervision will begin that includes, among  
24 other things, the primary requirement that you obey all laws:  
25 The laws of the United States, our 50 states, local



1 governments. And that means if you are deported, you cannot  
2 return unless you can do so legally. If you come back  
3 illegally, after a deportation for this serious of a crime, the  
4 act of returning alone is punishable by up to 20 years in  
5 prison just for coming back.

6 DEFENDANT ARCILA: (Nods head.)

7 THE COURT: So you must take that seriously.

8 You must provide a DNA sample, if requested by your  
9 probation officer.

10 Ms. Bolstad, are there any other matters to address  
11 for Mr. Arcila?

12 MS. BOLSTAD: No, your Honor.

13 THE PROBATION OFFICER: Excuse me, your Honor.

14 THE COURT: Counsel, anything else.

15 MR. SEPP: No, nothing, your Honor.

16 THE PROBATION OFFICER: Your Honor?

17 THE COURT: Yes.

18 THE PROBATION OFFICER: Mr. Arcila is actually a U.S.  
19 citizen. He was born in California, and so we do have the --

20 THE COURT: I apologize. I overlooked that. I'm  
21 sorry.

22 THE PROBATION OFFICER: We have the standard  
23 conditions, and also mental health conditions and --

24 THE COURT: So five years of supervised release, here  
25 in this country. Same first condition: Obey all laws.

1           And then there are a number of standard conditions.  
2       Report truthfully and regularly to your probation officer.  
3       You -- I'm going to impose a no-alcohol condition. Meaning  
4       that until a judge says otherwise, you cannot drink alcohol.  
5       You cannot go to a place where alcohol is the primary item for  
6       sale: A tavern, a bar, et cetera.

7           Hopefully, when you're released, you will have  
8       addressed these issues and that condition won't be needed. But  
9       you would have to ask your probation officer to ask the Court  
10      to change it before you could ignore it.

11           THE DEFENDANT: Okay.

12           THE COURT: I'm requiring that you have an updated  
13      mental health evaluation at the time you start supervision so  
14      that if you do have counseling needs, think can be addressed  
15      based on what your situation is then and not assuming what they  
16      are now. They'll all change, and you will too; hopefully for  
17      the better.

18           And thank you for bringing that to my attention. I  
19      apologize for overlooking that.

20           Ms. Bolstad?

21           MS. BOLSTAD: Nothing further, your Honor.

22           THE COURT: Mr. Sepp?

23           MR. SEPP: Nothing further, your Honor.

24           THE COURT: Gentlemen, good luck to you. We are in  
25      recess.

1 (Conclusion of proceedings.)

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3 --oOo--

4  
5 I certify, by signing below, that the foregoing is a correct  
6 stenographic transcript of the oral proceedings had in the  
7 above-entitled matter this 6th day of June, 2016. A transcript  
8 without an original signature or conformed signature is not  
9 certified. I further certify that the transcript fees and  
10 format comply with those prescribed by the Court and the  
11 Judicial Conference of the United States.

12 /S/ Amanda M. LeGore

13 \_\_\_\_\_  
14 AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE  
15 CSR No. 15-0433 EXP: 3-31-2018  
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